

NOV 26 2008

Express Mail ED 777379986 US

In the Matter of the

File No. SLD -

Appeal of the Decision of the

Universal Service Administrator by
Windber Area School District

Federal-State Joint Board on
Universal Service
Changes to the Board of Directors of
The National Exchange Carrier
Association, Inc.

cc: Docket No. 02-6

CC Docket No. 96 - 45

CC Docket No. 97 - 21

Appeal¹
Request for Waiver
and
Request for Expedited Relief

November 18, 2008

Marlene H. Dortch
Office of the Secretary
Federal Communications Commission
445 12th Street, S.W. Suite TW-A325
Washington, D.C. 20554

This is an appeal from an adverse decision of the USAC.

¹ Section 54.719(c) of the Commission's rules provides that any person aggrieved by an action taken by a division of the Administrator may seek review from the Commission. 47 C.F.R. § 54.719(c). The Commission's rules provide that requests for review of decisions shall be considered and acted upon by the Common Carrier Bureau, except that requests which raise novel questions of fact, law, or policy shall be considered by the full Commission. 47 C.F.R. § 54.722(a).

Enclosed, find the original and four copies of the Appeal. An extra copy is also enclosed.

Please time stamp the extra copy and return it to me in the enclosed self addressed-stamped envelope.

(1) **Funding Commitment Decision Letter Appealed**

Form 471 Application Number:	609497
Funding Year :	2008
Billed Entity Number for System:	125450
Date of Funding Denial Notice:	November 5, 2008
Date of Appeal:	November 18, 2008

(2) **Windber Area School District Contact Information**

Linda Aléxander
Windber Area School District
27600 Chagrin Blvd., Rm 260
Cleveland Ohio 44122
Phone: 216.682.0169
Fax: 216.514.3337

(3) **FRN Appealed**
1678583

(4) **SLD's Reason for Funding Denial**

“***30% or more of this FRN includes a request for AlertNow Rapid Attendance Communication (Saf-t-net Inc.) which is an ineligible product (s) service (s) ***.”
Exhibit A

It's unclear from the Administrator's Denial whether the Denial is because 30% or more of the FRN relates to Telecommunications (the FRN was filed as Internet Access), or whether the 30% relates to some other issue.

(5) **AlertNow Rapid Attendance Communication (“Alertnow”) is an allowable service/product. AlertNow can use either:**

- Web-based service (E-mail)

- Landline phones
- Cell phones

All three (3) are Priority One USF services.

As stated on the Item 21 Attachment, Alertnow Rapid Attendance Communication is for "rapid access notification for attendance communications" for the Windber Area School District. **Exhibit B**

Pursuant to its website, http://www.alertnow.com/02_00.html, Alertnow operates in the following manner:

Situations ranging from severe weather and power outages to gas leaks or any situation that causes a school to evacuate, relocate, or lockdown are considered emergencies. The message is instantly broadcasted to the preferred devices selected by the recipients, such as landline phones, mobile phones or e-mail devices. AlertNow is not dependent on local electric power, phone or Internet connectivity.

The ability for schools to communicate immediately and reliably during a crisis is invaluable. A crisis situation can happen at any moment. AlertNow provides an instant, proven communications solution to notify parents and staff within minutes. AlertNow provides capabilities to create, edit and delete content for voice, e-mail and text-to-speech templates within the AlertNow Message Center. The Web-based administration tool guides users through various procedures step-by-step. Authorized users can set up accounts and an unlimited number of

distribution groups, schedule messages for distribution, manage contact lists and view reports.

AlertNow allows school administrators to keep teachers, students and parents updated quickly and efficiently with and helps a parent stay actively involved in the student's education. AlertNow has the ability to:

- ☐ reach thousands of parents in minutes
- ☐ send notifications even when school phone lines are down
- ☐ rapidly deliver information for emergency and non-emergency situations
- ☐ perform polls and surveys
- ☐ quell rumors before they get out of hand
- ☐ boost fundraising efforts
- ☐ notify parents when lunch balances are running low
- ☐ send reminders on field trip forms, PTA meetings, etc.

Parental involvement is directly related to the success of students. AlertNow

helps schools throughout the country improve parent involvement in the educational community by delivering important and/or time sensitive information while engaging any specific audience with a unique message that can be recorded in a familiar authoritative voice. As an industry innovator and expert, AlertNow will transform the way that your school communicates.

The Joint Explanatory Statement of the Committee of the Conference makes it clear that "the ability of K-12 classrooms*** to obtain access to advanced telecommunications services is critical. No one would question parental involvement in the education process. Actually, it is the lack of parental involvement in the classroom that is the issue nationwide.

AlertNow is the perfect tool, whether *via* Telecommunications or Internet access that supports K-12 classroom learning, *e.g.*, it helps a parent, stay actively involved in the student's education.

The Bishop Perry Order states:

*** applicants committed minor errors in filling out their application forms. For example, among other problems, applicants inadvertently forgot to fill in a box, had computer problems, used an outdated form that requests primarily the same information as the current one, or misread the instructions. We do not believe that such minor mistakes warrant the complete rejection of each of these applicants' E-rate applications, especially given the requirements of the program and the thousands of applications filed each year. Importantly, applicants' errors could not have resulted in an advantage for them in the processing of their application. That is, the applicants' mistakes, if not caught by USAC, could not have resulted in the applicant receiving more funding than it was entitled to. In addition, at this time, there is no evidence of waste, fraud or abuse, misuse of funds, or a failure to adhere to core program requirements. Furthermore, we find that the denial of funding requests inflicts undue hardship on the applicants. In these cases, we find that the applicants have demonstrated that rigid compliance with the application procedures does not further the purposes of section 254(h) or **serve the public interest.** *Request for Review of the Decision of the Universal Service Administrator by Bishop Perry Middle School, et al., Schools and Libraries Universal Service Support Mechanism, File Nos. SLD-487170, et al., CC Docket No. 02-6, Order, 21 FCC Rcd. 5316, 5319-20, 5326-27, Para 11 Released: May 19, 2006 [Emphases Added]*

Specifically, the Bishop Perry Order states in clear language "Importantly, applicants' errors could not have resulted in an advantage for them in the processing of their application." *Id.* **Since, AlertNow can either be Internet Access or Telecommunications, both Priority One service, an error, if any, did not result in an advantage to Windber.** No substantive violation was committed; a violation, if any, was procedural in nature, and minor *Id., Para 19, 23* This Commission's directive to guard against waste, fraud, and abuse, and ensuring that funds disbursed through the E-rate

program are used for appropriate purposes is not compromised. Funding AlertNow is in the Public Interest

(6) **The rule states that**, "[i]f 30 percent or more of a request for discounts made in an FCC Form 471 is for ineligible services, the request shall be denied in its entirety."¹ See 47 C.F.R. § 54.504(d). The Administrator states that "***30% or more of this FRN includes a request for AlertNow Rapid Attendance Communication (Saf-t-net Inc.) which is an ineligible product (s) service (s) ***."

There is no statement in the denial that specifically identifies the 30% ineligible service or product. **Exhibit A**

In *Aiken County Public Schools* this Commission stated, *in relevant part*:

*** Petitioners' requests for E-rate funding were erroneously denied in full by USAC because USAC improperly determined that more than 30 percent of each of the funding requests was for ineligible services. We reverse USAC's decisions for the Group A Petitioners. We find that in eight cases, USAC appears to have denied funding based on a misunderstanding of the services the petitioners were seeking to have funded. In two cases, we find that some, although not all, of the services USAC deemed ineligible were eligible. In five other cases, we agree with the petitioners that improper labeling or a misleading response by the service provider caused USAC to treat the requested services as ineligible. In three cases, ineligible services exceeded 30 percent of the funding request only because USAC overstated the amounts attributable to the ineligible services it identified.¹ In four other instances, we agree with the petitioners that, although they failed to follow USAC's recommendation that they request eligible Priority One services separately from Priority Two services, their entire funding requests should not have been treated as Priority Two services simply because more than 30 percent of their funding requests were for Priority Two services."

For the Group B Petitioners, we find that good cause exists to justify a waiver of section 54.504(d) of the Commission's rules. Accordingly, we permit these petitioners to revise their funding requests to remove ineligible services. Eight petitioners acknowledge that they made errors by requesting discounts on ineligible services, but claim that the errors were accidental.¹ Nine other petitioners appear to have expected that USAC would give them a chance to correct any errors. In seven cases, the petitioners erroneously sought cellular phone services that were not eligible in the funding year in which they sought them.¹ Lastly, some petitioners seem to have misunderstood that some of the

services they requested were not eligible we find that good cause exists to waive the Commission's 30 percent rule to allow the petitioners to remove ineligible services from their funding requests. We find that, for the reasons described below, a waiver is warranted and in the public interest. We believe that the petitioners made good faith efforts to exclude the ineligible services from their funding requests and expect that the petitioners would have done so if informed by USAC that the requested services were ineligible. We note that those tasked with working on E-rate applications are typically school administrators, technology coordinators, teachers and librarians who may have little experience with distinguishing between eligible and ineligible services for the E-rate program. This may be particularly true of staff at small school districts or libraries.¹ We also note that the relevant technologies and service offerings are constantly improving and evolving, and the Commission's eligible services list is modified on an annual basis.

we find that denying the petitioners' requests would create undue hardship and prevent these otherwise eligible schools and libraries from receiving funding that they need to bring advanced telecommunications and information services to their students and patrons. By contrast, waiving the 30 percent rule for these petitioners and granting only the portions of these requests that are for eligible services will further the goal of section 254² of the Act – ensuring access to discounted telecommunications and information services to schools and libraries – and therefore serve the public interest.¹ In particular, we believe that by directing USAC to provide applicants with an opportunity to justify the requested services as eligible or remove ineligible services from their funding requests, we will provide for a more effective application processing system and ensure that eligible schools and libraries are able to realize the intended benefits of the E-rate program as the Commission considers additional steps to reform and improve the E-rate program.¹ Requiring USAC to take these additional steps will not reduce or eliminate any application review procedures or lessen the program requirements.

While an Applicant must submit complete and accurate information to USAC as part of the application review process, the Administrator should tell the Applicant what it

¹ Telecommunications Act of 1996, Sec (6) of 254. Universal Service states, *in relevant part*, that Elementary Secondary schools and classrooms should have access to advanced telecommunications services***, and Sec (7) states, *in relevant part*, that the Commission shall take into account advances in telecommunications and information technologies and services. The Joint Explanatory Statement of the Committee of the Conference makes it clear that "the ability of K-12 classrooms*** to obtain access to advanced telecommunications services is critical***" See, *Conference Report, February 1, 1996, Pg 132*

did wrong. What is it that the Administrator finds in the application that violates the 30 % rule?

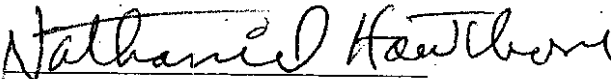
Conclusion:

AlertNow s the perfect tool, whether *via* Telecommunications or Internet access that supports K-12 classroom learning, *e.g.*, it helps a parent, stay actively involved in the student's education in a school district of 1393 students. **Exhibit C**

The Following Action is requested by the FCC:

- (a) Within 90 days or less Order funding for the telecommunications services requested in the 471 Application, specifically: FRN: 1678583
- (b) Set aside funds to totally fund FRN: 1678583
- (c) Waive the 30% Rule if it is applicable.

Respectfully submitted,



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Attorney for Windber Area School District
Cc: Superintendent
Windber Area School District
2301 Graham Avenue
Windber PA 15963-1964

Exhibit A



Schools and Libraries Division

FUNDING COMMITMENT DECISION LETTER
(Funding Year 2008: 07/01/2008 - 06/30/2009)

November 5, 2008

LINDA ALEXANDER
WINDBER AREA SCHOOL DISTRICT
STE 260-27600 CHAGRIN BLVD
CLEVELAND, OH 44122

Re: Form 471 Application Number: 609497
Billed Entity Number (BEN): 125450
Billed Entity FCC RN: 0011991155
Applicant's Form Identifier: WINDBERYR11#3

Thank you for your Funding Year 2008 application for Universal Service Support and for any assistance you provided throughout our review. The current status of the funding request(s) in the Form 471 application cited above and featured in the Funding Commitment Report(s) (Report) at the end of this letter is as follows.

- The amount, \$3,444.00 is "Denied."

Please refer to the Report following this letter for specific funding request decisions and explanations. The Universal Service Administrative Company (USAC) is also sending this information to your service provider(s) so preparations can begin for implementing your approved discount(s) after you file FCC Form 486, Receipt of Service Confirmation Form. A guide that provides a definition for each line of the Report is available in the Reference Area of our website.

NEXT STEPS

- Work with your service provider to determine if you will receive discounted bills or if you will request reimbursement from USAC after paying your bills in full
- Review technology planning approval requirements
- Review CIPA requirements
- File Form 486
- Invoice USAC using the Form 474 (service provider) or Form 472 (Billed Entity applicant) - as products and services are being delivered and billed

TO APPEAL THIS DECISION:

You have the option of filing an appeal with the SLD or directly with the Federal Communications Commission (FCC).

If you wish to appeal a decision in this letter to USAC, your appeal must be received by USAC or postmarked within 60 days of the date of this letter. Failure to meet this requirement will result in automatic dismissal of your appeal. In your letter of appeal:

1. Include the name, address, telephone number, fax number, and (if available) email address for the person who can most readily discuss this appeal with us.
2. State outright that your letter is an appeal. Include the following to identify the letter and the decision you are appealing:
 - Appellant name,
 - Applicant name and service provider name, if different from appellant,
 - Applicant BEN and Service Provider Identification Number (SPIN),
 - Form 471 Application Number 609497 as assigned by USAC,
 - "Funding Commitment Decision Letter for Funding Year 2008," AND
 - The exact text or the decision that you are appealing.

3. Please keep your letter to the point, and provide documentation to support your appeal. Be sure to keep a copy of your entire appeal, including any correspondence and documentation.
4. If you are the applicant, please provide a copy of your appeal to the service provider(s) affected by USAC's decision. If you are the service provider, please provide a copy of your appeal to the applicant(s) affected by USAC's decision.
5. Provide an authorized signature on your letter of appeal.

To submit your appeal to USAC by email, email your appeal to appeals@sl.universalservice.org. USAC will automatically reply to incoming emails to confirm receipt.

To submit your appeal to USAC by fax, fax your appeal to (973) 599-6542.

To submit your appeal to USAC on paper, send your appeal to:

Letter of Appeal
Schools and Libraries Division - Correspondence Unit
100 S. Jefferson Road
P.O. Box 902
Whippany, NJ 07981

If you wish to appeal a decision in this letter to the FCC, you should refer to CC Docket No. 02-5 on the first page of your appeal to the FCC. Your appeal must be received by the FCC or postmarked within 60 days of the date of this letter. Failure to meet this requirement will result in automatic dismissal of your appeal. We strongly recommend that you use the electronic filing options described in the "Appeals Procedure" posted in the Reference Area of our website. If you are submitting your appeal via United States Postal Service, send to: FCC, Office of the Secretary, 445 12th Street SW, Washington, DC 20554.

NOTICE ON RULES AND FUNDS AVAILABILITY

Applicants' receipt of funding commitments is contingent on their compliance with all statutory, regulatory, and procedural requirements of the Schools and Libraries Program. Applicants who have received funding commitments continue to be subject to audits and other reviews that USAC and/or the FCC may undertake periodically to assure that funds that have been committed are being used in accordance with all such requirements. USAC may be required to reduce or cancel funding commitments that were not issued in accordance with such requirements, whether due to action or inaction, including but not limited to that by USAC, the applicant, or the service provider. USAC, and other appropriate authorities (including but not limited to the FCC), may pursue enforcement actions and other means of recourse to collect improperly disbursed funds. The timing of payment of invoices may also be affected by the availability of funds based on the amount of funds collected from contributing telecommunications companies.

Schools and Libraries Division
Universal Service Administrative Company

FUNDING COMMITMENT REPORT
Billed Entity Name: WINDBER AREA SCHOOL DISTRICT
BEN: 125450
Funding Year: 2008

Comment on RAL corrections: The applicant did not submit any RAL corrections.

Form 471 Application Number: 609497
Funding Request Number: 1678583
Funding Status: Not Funded
Category of Service: Internet Access
Form 470 Application Number: 283020000649305
SPIN: 143030399
Service Provider Name: Saf-t-net, Inc
Contract Number: C
Billing Account Number: N/A
Multiple Billing Account Numbers: N
Service Start Date: 07/01/2008
Service End Date: N/A
Contract Award Date: 01/22/2008
Contract Expiration Date: 06/30/2009
Shared Worksheet Number: 964847
Number of Months Recurring Service Provided in Funding Year: 12
Annual Pre-discount Amount for Eligible Recurring Charges: \$.00
Annual Pre-discount Amount for Eligible Non-recurring Charges: \$4,305.00
Pre-discount Amount: \$4,305.00
Discount Percentage Approved by the USAC: 80%
Funding Commitment Decision: \$0.00 - Ineligible Services/Products
Funding Commitment Decision Explanation: DRI: 30% or more of this FRN includes a request for Alertnow Rapid Attendance Communication (Saf-t-net Inc) which is an ineligible product(s)/service(s) based on program rules.

FCDL Date: 11/05/2008

Wave Number: 029

Last Allowable Date for Delivery and Installation for Non-Recurring Services: 09/30/2009

Exhibit B



Item 21 Attachment

Internet Access - Funding Year 2008

Applicant Name	WINDBER AREA SCHOOL DISTRICT
Billed Entity Number	125450
Form 471 Application Number	609497
Funding Request Number	1678583
Service Provider	Triangle Resource Group Inc
Attachment Number	IA-ALERT
Narrative description of this Funding Request	INTERNET ACCESS FOR SCHOOL DISTRICT

Service Type	Service Description	Elig Pre-Discount Cost
1 Other	INTERNET ACCESS FOR RAPID NOTIFICATION FOR ATTENDANCE COMMUNICATIONS	\$4,305.00
	Number of InternetAccess Lines (if applicable)	0
	Recurring Charges	Non Recurring Charges
	Monthly Recurring Charges	\$0.00 One-time non-recurring charges \$4,305.00
	Less Ineligible Amount (if any)	\$0.00 Less Ineligible Amount (if any) \$0.00
	Number of Months	12
	Eligible recurring charges	\$0.00 Eligible non-recurring charges \$4,305.00
		Line item TOTAL \$4305
	Total:	\$4,305.00
	Funding Requested on 471:	\$4,305.00

Date Submitted

3/5/2008 1:19:27 PM

Exhibit C

This information will facilitate the processing of your applications. Please complete all rows that apply to services for which you are requesting discounts. Complete this information on the FIRST Form 471 you file, to encompass this and all other Forms 471 you will file for this funding year. You need not complete this information on subsequent Forms 471. Provide your best estimates for the services ordered across ALL of your Forms 471.

Schools/school districts complete Item 7. Libraries complete Item 8. Consortia complete Item 7 and/or Item 8.

Block 2: Impact of Services Ordered on Schools

IF THIS APPLICATION INCLUDES SCHOOLS...		BEFORE ORDER	AFTER ORDER
7a	Number of students to be served		1393
b	Telephone service: Number of classrooms with phone service	14	14
c	Dial-up Internet access: Number of connections (up to 56kbps)	0	2
d	Direct broadband services: Number of buildings served at the following speeds:		
	Less than 10 mbps	1	1
	Between 10 mbps and 200 mbps	0	0
	Greater than 200 mbps	0	0
e	Direct connections to the Internet: Number of drops	1400	1400
f	Number of classrooms with Internet access	150	150
g	Number of computers or other devices with Internet access	800	950

Block 3: Impact of Services Ordered on Libraries

NOT APPLICABLE AS THIS APPLICATION IS FOR DISTRICT

Worksheet A No: 964847

Student Count: 1393

Weighted Product (Sum. Column 8): 1114.4

Shared Discount: 80%

1. School Name: WINDBER AREA HIGH SCHOOL

2. Entity Number: 17357 NCES: 42 26610 04026

3. Rural/Urban: Urban

4. Student Count: 801

5. NSLP Students: 404

6. NSLP Students/Students: 50.436%

7. Discount: 80%

8. Weighted Product: 640.8

9. Pre-K/Adult Ed/Juv: N

10. Alt Disc Mech: Y

1. School Name: WINDBER ELEMENTARY SCHOOL

2. Entity Number: 17359 NCES: 42 26610 00280

3. Rural/Urban: Urban

4. Student Count: 592

5. NSLP Students: 294

6. NSLP Students/Students: 49.662%

7. Discount: 80%

8. Weighted Product: 473.6

9. Pre-K/Adult Ed/Juv: N

10. Alt Disc Mech: Y

Block 5: Discount Funding Request(s)

FRN: 1678583

FCDL Date:

10. Original FRN:

11. Category of Service: Internet Access

12. 470 Application Number: 283020000649305